

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

DIEGO VALENCIA, ARTEMIO GARCIA,

Plaintiffs,

v.

GRASS WORKS LAWN CARE LLC;
FERRIS MYCUE,

Defendants.

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CASE NO. 1:17-CV-574

ORIGINAL COMPLAINT

1. This is an action for unpaid wages brought pursuant to the federal Fair Labor Standards Act (“FLSA”) by two workers employed by the Defendants to labor for Defendants’ landscaping business, Grass Works Lawn Care LLC, in and around Austin, Texas. The Plaintiffs regularly worked more than 40 hours per week, regularly more than 60 hours per week and Defendants did not pay the Plaintiffs the required overtime premium for all hours worked in excess of 40 hours during each workweek. The Defendants failed to accurately record the hours the Plaintiff worked, and repeatedly underpaid the Plaintiffs in violation of the FLSA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the Plaintiff’s FLSA claims pursuant to the following:
- a. 28 U.S.C. § 1331 (Federal Question);
 - b. 28 U.S.C. § 1337 (Interstate Commerce); and
 - c. 29 U.S.C. § 216(b) (FLSA);

3. This Court has personal jurisdiction over the Defendants because each Defendant has sufficient contacts with this forum to give this Court general jurisdiction over each Defendant.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2).

5. The Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff Diego Valencia is an individual who worked for the Defendants' landscaping business and resides in Travis County, Texas. Plaintiff Diego Valencia has consented to the filing of this action for violations of the FLSA, see Exhibit A.

7. Plaintiff Artemio Garcia is an individual who worked for the Defendants' landscaping business and resides in Travis County, Texas. Plaintiff Artemio Garcia has consented to the filing of this action for violations of the FLSA, see Exhibit A.

8. Defendant Grass Works Lawn Care LLC is a domestic limited liability company formed and existing under the laws of the State of Texas and whose principal place of business is 6901 Ranch Road 620 N., Austin, Texas 78732. Defendant Grass Works Lawn Care LLC may be served with process by serving its registered agent, Ferris MyCue at 6901 Ranch Road 620 N., Austin, Texas 78732.

9. Defendant Ferris MyCue is an individual residing in or around Austin, Texas who may be served at his principal place of business at 6901 Ranch Road 620 N., Austin, Texas 78732.

FACTS

10. Defendants operate a landscaping business known as Grass Works Lawn Care LLC out of its main office located at 6901 Ranch Road 620 N., Austin, Texas 78732.

11. Defendants employed Plaintiffs to perform manual labor as landscaping laborers for Defendants' business.

12. Plaintiff Diego Valencia worked as an employee of Defendants from approximately June 2014 to March 2017.

13. Plaintiff Artemio Garcia worked as employee of Defendants from approximately September 2014 to March 2017.

14. At all times relevant to this action, Plaintiffs routinely worked more than 40 hours per week for the Defendants, and regularly worked up to more than 60 hours per week for the Defendants.

15. Defendants did not properly record the number of hours the Plaintiffs worked for the Defendants as required by the Fair Labor Standards Act.

16. Defendants compensated Plaintiffs at a day rate based on the number of days they labored for the Defendants.

17. Defendants failed to pay Plaintiffs the required time and one-half their regular rate of pay as overtime compensation for all hours Plaintiffs worked in excess of 40 hours during each work week.

18. At all times relevant to this action, Defendants controlled and supervised the work performed by Plaintiffs.

19. In performing their landscaping work, Plaintiffs handled goods and equipment imported from other countries and states, including lawnmowers, leaf blowers, trimmers, tractor lawn mowers, and chainsaws.

20. Defendants have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaged in commerce or in the production of goods for

commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce, by any person, and in that said enterprise has had and has an annual gross volume of sales made or business done in excess of \$500,000, exclusive of excise taxes at the retail level which are separately stated.

21. At all times relevant to this action, Plaintiffs were employees of each and every one of the Defendants.

22. Defendant Grass Works Lawn Care LLC has operated its landscaping business out of its main office located at 6901 Ranch Road 620 N., Austin, Texas, and before that operated its landscaping business out of its main office located at 1003 Adventure Lane in Cedar Park, Texas

23. Defendant Ferris MyCue is an officer, manager, and director of Grass Works Lawn Care.

24. At all times relevant to this action, Defendant Ferris MyCue had operational control over Grass Works Lawn Care, exercised control over the terms and conditions of employees' work, and had the power to act on behalf of Grass Works Lawn Care vis-a-vis its employees, including Plaintiffs.

25. Upon information and belief, Defendant Ferris MyCue developed the scheme to underpay Plaintiffs, and had the power and exercised the power to establish wages and working conditions of Grass Works Lawn Care's employees, including the decisions to hire and fire employees.

26. Plaintiffs incurred various costs for the benefit of their employer related to the performance of their jobs for Defendants, including tolls and other expenses that operated as de facto deductions from their wages.

27. At all times relevant to this action, Defendants knowingly, willfully, or with reckless disregard, carried out their illegal pattern or practice of failing to pay overtime compensation due to Plaintiffs.

28. At all times relevant to this action, Defendants failed to maintain complete and accurate records of Plaintiffs' hours of work as required by the FLSA.

COUNT I – FAIR LABOR STANDARDS ACT

29. Plaintiff reincorporates and realleges each of the foregoing paragraphs of this Complaint as if fully set forth herein.

30. This count sets forth a claim for declaratory relief and damages for each Defendant's violation of the overtime provisions of the FLSA.

31. Defendants violated the FLSA, 29 U.S.C. § 207(a), by failing to pay Plaintiffs the proper overtime wage rate.

32. Defendants' failure to pay Plaintiffs their federally mandated overtime wages was a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

33. As a consequence of Defendants' violations of the FLSA, Plaintiffs are entitled to recover their unpaid overtime wages, plus an additional equal amount in liquidated damages, the costs of suit, and reasonable attorneys' fees pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this court:

- a. Declare Defendants in violation of each of the counts set forth above;
- b. Award damages to Plaintiffs for Defendants' failure to pay overtime wages under the FLSA and an equal amount of liquidated damages pursuant to 29 U.S.C. § 216(b).
- c. Award Plaintiffs the costs of this action;
- d. Award Plaintiffs a reasonable attorneys' fee;
- e. Award Plaintiffs Pre-Judgment and Post-Judgment interest, as provided by law;
- f. Grant such other relief as this Court deems just and proper.

Dated this 13th day of June, 2017.

Respectfully submitted,

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